



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2020-0216]

RIN 1625-AA01

Anchorage Grounds; Cape Fear River Approach, North Carolina

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the anchorage regulations for Lockwoods Folly Inlet, NC, and adjacent navigable waters, by establishing a new offshore anchorage, relocating the existing explosives anchorage and amending the anchorage regulations. The purpose of this supplemental proposed rule is to improve navigation and public safety by accommodating recent and anticipated future growth in cargo vessel traffic and vessel size that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, North Carolina. We invite your comments on this supplemental proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2020-0216 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Gregory Kennerley, Sector North

Carolina, U.S. Coast Guard; telephone (910) 772-2230, email Gregory.M.Kennerley@uscg.mil; or Mr. Matthew Creelman, Waterways Management Branch, Fifth Coast Guard District, U.S. Coast Guard; telephone (757) 398–6225, email Matthew.K.Creelman2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM	Bureau of Ocean Energy Management
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On May 8, 2020, the Coast Guard published a notification of inquiry in the ***Federal Register*** (85 FR 27343) to solicit public comments on whether we should initiate a rulemaking to establish an anchorage ground offshore in the approaches to the Cape Fear River, North Carolina, and to increase the size and relocate the existing Lockwood’s Folly Inlet explosives anchorage. After receiving favorable comments, the Coast Guard decided to propose the rulemaking. On August 17, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) in ***Federal Register*** (86 FR 45936), stating why we issued the NPRM, and invited comments on our proposed anchorage. During the comment period that ended on October 18, 2021, we received five comment letters in response. The Coast Guard is now issuing this supplemental notice of proposed rulemaking (SNPRM) to solicit comments on changes made to the NPRM.

The purpose of this proposed rule is to accommodate recent and anticipated future growth in cargo vessel traffic and vessel size that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, improve navigation and public safety, and to preserve areas traditionally used for anchoring.

The legal basis and authorities for this notice of proposed rulemaking are found in 46 U.S.C.70006, 33 CFR 1.05-1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

III. Discussion Comments, Changes, and Proposed Rule

As noted above, we received five comments on our NPRM published August 17, 2021. One was in full support of the proposed rule, one had concerns over possible area use conflicts with offshore wind energy development, and three were regarding potential conflict with the anchorage and an artificial reef. The following sections detail the concerns raised by these comments. As a result, the Coast Guard has issued this SNPRM with proposed changes to the regulatory text of the rule. Specifically, we propose the western boundary and coordinates of the proposed Explosives Anchorage B be moved 1000 yards eastward to avoid a conflict with a North Carolina Division of Marine Fisheries Artificial Reef (AR-455). The remainder of the proposed rule remains unchanged.

A. Offshore Wind Development

One commenter raised concerns that the proposed anchorage would take up an area that could be utilized for offshore wind energy development, and by doing so, would deprive the local economy of investment and energy resulting from the development. The Coast Guard finds this comment to be not applicable to this particular rulemaking as the proposed anchorage area does not overlap or limit any known wind energy lease area as published by the Bureau of Ocean Energy Management (BOEM), the lead agency in the U.S. offshore wind development. The Coast Guard works closely with BOEM in the planning of these offshore lease areas and has confirmed the area proposed for this rule is not under consideration for wind development.

B. Artificial Reef

There were three comments received by the Coast Guard with concerns that the westernmost boundary of the proposed Explosives Anchorage B overlapped the location of an artificial reef, North Carolina Division of Marine Fisheries' Reef (AR-455). This overlap reveals potential hazards as anchoring vessels could damage the reef or possibly foul their anchors on the underwater structures. The Coast Guard agreed with these concerns and reached out to the North Carolina Division of Marine Fisheries to discuss a new agreeable boundary for the anchorage that would not conflict with AR-455. After reviewing the location of each of the underwater features within AR-455, the Coast Guard proposes to move the western boundary of Anchorage B 1000 yards to the east of AR-455. This distance would prevent any vessel anchored within Anchorage B from damaging the reef or interfering with other vessels visiting the reef. This would reduce the overall size of anchorage area initially proposed, but the Coast Guard believes there is still sufficient area within the anchorage to meet anchorage needs.

C. Proposed rule

The intent of this proposed rule remains unchanged. This proposed rule would formally establish an anchorage ground, Anchorage A, approximately eight nautical miles southwest of the Oak Island Light. This proposed rule would also increase the size and relocate Lockwoods Folly Inlet explosives anchorage to adjacent Anchorage A on its western boundary; and rename it Anchorage B. The specific coordinates for these proposed anchorage grounds are included in the proposed regulatory text at the end of this document.

You may find an illustration of the anchorages in the docket where indicated under **ADDRESSES**. Additionally, the anchorage ground is available for viewing on the Mid-Atlantic Ocean Data Portal at <https://portal.midatlanticocean.org/visualize/>. See “USCG Proposed Areas and Studies” under the “Maritime” portion of the Data Layers section.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This SNPRM has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, the SNPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and historical vessel traffic data pertaining to the anchorage locations. The regulation would designate and preserve an approximately 22 square mile deep water area traditionally used by cargo ships for anchoring near existing traffic lanes. It would also relocate the existing explosives anchorage approximately five nautical miles further offshore increasing separation distances between vessels laden with explosives and the public, and expand its size from approximately five to seven square miles. This regulatory action provides commercial vessel anchorage needs while enhancing the navigation safety, environmental stewardship, and public safety.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to use the anchorages may be small entities, for the reasons stated in section IV. A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The towns and communities along the Cape Fear River approaches have an economy based on tourism and numerous small entities and businesses. The establishment of Anchorage A and Anchorage B will increase controls over vessels that currently anchor in the general vicinity and increase the distance between anchored vessels and the shore and beaches, lessening impacts these small entities may currently experience.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made

a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing an anchorage ground, Anchorage A, in an area traditionally used by cargo ships for anchoring in the approaches to the Cape Fear River, NC; and increasing the size of and relocating the Lockwoods Folly Inlet explosives anchorage to an area adjacent to Anchorage A (on its western boundary), expanding its use, and renaming it Anchorage B. Normally such actions are categorically excluded from further review under paragraph L[59] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the

Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2020-0216 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071, 46 U.S.C. 70034; 33 CFR 1.05-1; Department of

2. Revise § 110.170 to read as follows:

§ 110.170 Cape Fear, N.C.

(a) *The anchorage grounds.* All coordinates in this section are based on the World Geodetic System (WGS 84).

(1) *Anchorage A.* The waters bound by a line connecting the following points:

Table 1 to Paragraph (a)(1)

Latitude	Longitude
33° 47' 59.09" N	78° 14' 58.67" W
33° 47' 59.09" N	78° 06' 24.74" W
33° 46' 01.22" N	78° 06' 24.74" W
33° 46' 01.22" N	78° 14' 58.67" W

(2) *Anchorage B.* Explosives anchorage. The waters bound by a line connecting the following points:

Table 2 to Paragraph (a)(2)

Latitude	Longitude
33° 47' 59.09" N	78° 17' 14.00" W
33° 47' 59.09" N	78° 14' 58.67" W
33° 46' 01.22" N	78° 14' 58.67" W
33° 46' 01.22" N	78° 17' 14.00" W

(b) *Definitions.* As used in this section--

Cargoes of particular hazard means “cargo of particular hazard” as defined in §126.3 of this title.

Class 1 (explosive) materials means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

Dangerous cargo means “certain dangerous cargo” as defined in §160.204 of this title.

U.S. naval vessel means any vessel owner, operated, chartered, or leased by the U.S. Navy; and any vessel under the operational control of the U.S. Navy or

Combatant Command.

(c) *General regulations.* (1) Vessels in the Atlantic Ocean near Cape Fear River Inlet awaiting berthing space within the Port of Wilmington shall only anchor within the anchorage grounds defined and established in this section, except in cases of emergency.

(2) Vessels anchoring under circumstances of emergency outside the anchorage areas shall be shifted to new positions within the anchorage grounds immediately after the emergency ceases.

(3) Vessels may anchor anywhere within the anchorage grounds provided such anchoring does not interfere with the operations of any other vessel at anchorage; except a vessel may not anchor within 1,500 yards of a vessel carrying or handling dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials. Vessels shall lie at anchor with as short of a chain or cable as conditions permit.

(4) Prior to entering the anchorage grounds, all vessels must notify the Coast Guard Captain of the Port Sector North Carolina (COTP) via VHF-FM channel 16.

(5) No vessel may anchor within the anchorage grounds for more than 72 hours without the prior approval of the COTP. To obtain this approval, contact the COTP via VHF-FM channel 16.

(6) The COTP may close the anchorage grounds and direct vessels to depart the anchorage during periods of severe weather or at other times as deemed necessary in the interest of port safety or security.

(7) The COTP may prescribe specific conditions for vessels anchoring within the anchorage grounds, including but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on

selected radio frequencies.

(d) *Regulations for vessels handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials.* This paragraph (d) applies to every vessel, except U.S. naval vessels, handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials.

(1) Unless otherwise directed by the Captain of the Port, each commercial vessel handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials must be anchored within Anchorage B.

(2) Vessels requiring the use of Anchorage B must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light. In lieu of a fixed red light, by night a red flag may be illuminated by spotlight.

Dated: March 10, 2022.

Laura M. Dickey,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.

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